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RULE ADOPTIONS

COMMUNITY AFFAIRS
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

41 N.J.R. 1399(b)

Adopted Amendment: N.J.A.C. 5:97-2.5

Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008

Measuring the Actual Growth Share Obligation

Proposed: November 3, 2008 at 40 N.J.R. 6265(a).

Adopted: March 12, 2009 by the New Jersey Council on Affordable Housing, Lucy Vandenberg, Executive Director.

Filed: March 13, 2009 as R.2009 d.113, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: April 6, 2009.

Expiration Date: June 2, 2013.

Summary of Public Comments and Agency Responses:

The Council received nine sets of written comments and public statements from the following individuals or organizations:

1. Thomas Boyle, Green Brook, NJ

2. Russell Huntington, Huntington Bailey LLP

3. Karen Jezierny, on behalf of Princeton University

4. Stanley A. Kober, Ho-Ho-Kus, NJ

5. Elizabeth McKenzie, Elizabeth C. McKenzie, PP, PA

6. Sal Perillo, Mayor, City of Ocean City, NJ

7. Barbara Sachau, Florham Park, NJ

8. Jeffrey Surenian, Jeffrey R. Surenian and Associates, LLC

9. Dean R. Marcolongo, on behalf of the Avalon Planning/Zoning Board

COMMENT: I would like to take this opportunity to support the proposed changes to the COAH rules. I had my home burn down a year ago in Green Brook, New Jersey, and was dismayed to find that I would be charged this fee. It is particularly unfair to those who have been forced into such a situation through fire or other disaster. Keep up the good work.

RESPONSE: The Council appreciates the commenter's support.

[page=1400] COMMENT: The ability of a municipality to receive demolition credits against their growth share calculation should apply to all residential development, not just to single family homes that have been issued demolition permits. The commenter notes that the Appellate Division considered and upheld COAH's original third-round rules formulation of demolition offsets for both residential and non-residential projects. The need for affordable housing is most accurately and equitably measured by the net new residential units constructed, and a formula that includes residential demolition offsets will better assess the true need for affordable housing. COAH's current rules permit offsets for non-residential demolition. The current proposal allows single-family demolition credit. These provisions suggest that COAH recognizes it is reasonable to assess affordable housing obligation based on the impact of net new construction. Reinstating demolition offsets for all residential construction is a logical extension of this concept. We encourage COAH to reinstate the demolition offset so a municipality's growth share obligation would be more consistent with its actual impact on the housing supply. This will provide an incentive for communities to reinvest in their dated housing stock and enhance the ability of municipalities and larger land owners to engage in more effective land use planning.

RESPONSE: The scope of the proposal is limited to residential development that is the direct result of a demolition permit that has been issued. As explained in response to comments on the original rule (see 40 N.J.R. 2690(a)), the methodology employed by the Council to establish Statewide affordable housing need included an accounting of demolitions that were factored in to the methodology and allocated at a regional level for the period 2004 through 2018. Therefore demolitions have already been factored in to the Council's growth projections. Statewide, 67,601 replacement units were factored into the methodology. The current rule proposal is limited in scope primarily to homes that are re-built as a result of fire, flood and natural disaster or homes that are being rebuilt for the benefit and use of current owner/occupant households. Redevelopment, rental properties, previously vacant properties, the replacement of units with a declining value in markets where a demolition and re-build results in increased market value and properties with a change of use or intensity of use, among other categories, would continue to generate a growth share obligation under the proposal.

COMMENT: The deletion of the demolition credit has a significant impact on the type of long-range planning and development undertaken by institutions such as Princeton University. Princeton has developed a plan that includes the demolition, construction and rehabilitation of housing for faculty, staff, and graduate students. One aspect of the plan calls for the University to demolish 304 units of existing barrack-style graduate student housing, to be replaced with the new construction of 220 to 240 new units of faculty/staff housing. This project will remove obsolete housing from a residential neighborhood in Princeton Township, relocate graduate students to a more appropriate location nearer to campus, and replace the current student apartments with new faculty/staff units that are more consistent in design and construction with the surrounding neighborhood. Ultimately, this project, along with the other projects in our campus-wide residential plan, will net an estimated 15 to 20 new faculty/staff units. The University has always been willing to meet its COAH obligation, as long as that obligation is based on formulas that accurately represent the reality of our construction projects. Under the current COAH rules, the University's growth share obligation for this project would be based on an assumption that we are adding 220 to 240 faculty/staff units, when in fact the net new faculty/staff units produced by our overall housing plan is only 15 to 20.

RESPONSE: It is important to note that certificates of occupancy issued for graduate student housing owned and/or operated by an institution of higher education are already subtracted from growth prior to calculating a municipal growth share obligation. Municipalities may also seek to exclude faculty and staff housing through the Council's waiver process.

COMMENT: The terms developer, development and redevelopment should be redefined to exclude single-family homeowners, like most "non-legislative speak" lay people understand those terms to be.

RESPONSE: The Council uses the terms developer, development and redevelopment in its rules in the same manner the terms are used in other laws governing development activity such as the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. As proposed, the amendment would exclude the demolition and reconstruction of owner-occupied units from determining the municipal growth share obligation. However, the creation of a new single family home, regardless of whether it is being built for resale by a for-profit builder or being built for owner occupancy, constitutes growth that is measured as part of the growth share methodology. When a demolition and reconstruction for the sole and exclusive use of current owner occupant households occurs as a result of fire, flood or natural disaster, the reconstruction is also exempt from the imposition of development fees.

COMMENT: The proposal needs to include an exemption for single family NJ Energy Star(R) certified homes, so that there would be more of an incentive for homeowners to use this energy saving program in future new home construction/re-construction, despite the higher up-front construction costs. This exemption should include all private, single-family, NJ Energy Star(R) certified, not-for-resale, residential, demolition and reconstruction projects that have an open permit, or are constructed or reconstructed, both prior to and after the enactment of this rule.

RESPONSE: The scope of the proposal is limited to residential development that is the direct result of a demolition permit that has been issued. While the Council supports energy efficient construction, the absence or presence of certified NJ Energy Star(R) technologies does not trigger how growth in New Jersey is measured.

COMMENT: The proposed rule amendment does not go far enough in addressing what a number of communities had pointed out to COAH, namely that people were buying up perfectly good houses and knocking them down for the sole purpose of building a larger more modern house. To limit the exemption to homes occupied by the owners for one year prior to demolition makes it unlikely that the exemption will be used because most people cannot demolish and rebuild their residence due to the need to be out of the property for the lengthy period of construction and the corresponding difficulty of locating temporary housing within the same school system. Furthermore, this awkward rule discourages an activity important to every town; that is the gradual replacement of aging and obsolete housing. I can think of no logical reason to decline to exempt any new home which replaces an existing home from the Growth Share calculations. In many communities, especially built up wealthy towns, this kind of residential growth represents most of the residential growth that occurs, since little or no vacant land remains in these towns to offer an alternative. The flaw in the proposed rule amendment is the requirement that the person demolishing the home shall have lived there for the preceding year. First, building departments do not keep records of how long a person has lived in a house when he applies for a demolition or building permit, so this is an impossible condition to meet and track. Second, the typical purchaser razes the home immediately and starts to build his "dream house" while he is still living elsewhere. Seldom does a homeowner demolish a building he already occupies. The rule appears to address the issue of knock-downs, but, in fact, it doesn't address the issue at all. As a result, COAH's methodology still results in an over counting of growth in areas where little or no net residential development is actually occurring.

RESPONSE: The proposed amendment is not intended to address the issue raised by the commenter. Indeed, as the commenter points out, the acquisition of sound structures to demolish them for the sole purpose of building a larger, more modern housing unit does represent most of the residential growth that occurs in some municipalities where little or no vacant land remains. This replacement-unit phenomenon is factored in to the Council's methodology at the Statewide level for the purpose of determining net growth. However, the Council did not intend for the equity issues that arise as a result of demolition and reconstruction that is for the sole and exclusive use of current owner occupant households. When there is no change in ownership or use for at least one year prior to demolition, the Council believes it is reasonable to accept that the demolition and reconstruction is occurring to provide an ongoing housing opportunity for an existing household. Conversely, the Council believes that a more recent change in ownership is more likely to be reflective of a transaction that is oriented toward the type of private investment and/or redevelopment that is captured in the methodology. Contrary to the commenter's observation, this rule specifically does allow for the gradual [page=1401] replacement of aging and obsolete housing provided it is for the benefit of current owner/occupant community members.

COMMENT: The stipulation that owner-occupied residential structures may only be subtracted from municipal growth share obligation when they have been occupied by the current owner a minimum of one year appears arbitrary, and does not provide an equitable methodology for the calculation of growth share. COAH should reject the proposed regulation and return to the former provision which provided a one for one credit for demolitions.

RESPONSE: The methodology employed by the Council accounted for demolitions and replacement units at the Statewide level for the purpose of determining net growth. However, the Council did not intend for the equity issues that arise as a result of demolition and reconstruction that is for the sole and exclusive use of current owner occupant households. When there is no change in ownership or use for at least one year prior to demolition, the Council believes it is reasonable to accept that the demolition and reconstruction is occurring to provide an ongoing housing opportunity for an existing household. Conversely, the Council believes that a more recent change in ownership is more likely to be reflective of a transaction that is oriented toward the type of private investment and/or redevelopment that is captured in the methodology.

COMMENT: The rule should be clarified to specify that, in the case of demolitions due to fire, flood or natural disaster, no development fee will be charged regardless of any increase in square footage or equalized assessed value to the reconstructed unit.

RESPONSE: As written, the rule specifies that reconstruction that results from fire, flood or natural disaster is exempt. The rule encompasses all reconstruction that results from fire, flood or natural disaster and the Council does not believe further clarification is necessary.

COMMENT: I am not in favor of expanded COAH housing since I see illegal immigrants living in them. Right and left the illegal immigrants qualify. If you are a long time worker in the United States, you are kept out of any of the COAH housing based on absolutely stupid qualifications. You can be the working poor, make too much to get in, make too little for some other reason. Instead of trying to help American citizens, the requirements seem skewed to favor illegal immigrants. This is absolutely wrong. I cannot support COAH at all until you start helping Americans. Senior citizens are particularly discriminated against.

RESPONSE: The comment is outside the scope of the proposal.

COMMENT: The commenter reiterates, verbatim, the following comments that were submitted to the Council's currently adopted rules:

COAH must take into account demolitions for residential growth, just as it has for non-residential growth because the premise of the growth share approach is not merely that if a municipality grows, it should have an obligation to grow with affordable housing. In addition, the premise is that it is reasonable and practicable to require municipalities to provide affordable housing in conjunction with new growth. A demolition, followed by reconstruction, does not present a realistic opportunity for a municipality to create affordable housing, as the municipality has no ability to require that the replacement unit become an affordable unit, when the project only allows for the demolition of one unit, followed by the creation of only one unit on the same parcel.

A failure to measure the net increase of residential growth violates the Appellate Division's decision, *In re Adoption of 5:94 and 5:95 By the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1, 65 (App. Div.), *certif. denied*, 192 *N.J.* 72 (2007), where the Appellate Division held that COAH must base its growth share methodology on actual, real growth within a municipality, and not based upon a formula or ratio. If an existing residential structure is demolished and replaced with only one residential structure, there has been no new growth. Therefore, COAH should measure the net increase in residential growth.

There is an internal inconsistency in COAH's approach between (i) the Vacant Land Adjustment policy and procedure, which has been part of COAH jurisprudence for decades, and (ii) the responsibilities created by the growth share requirements. When COAH does a vacant land analysis, the purpose has always been to identify the realistic development potential. COAH does not factor in the impact of demolitions when determining the realistic development potential in a community because a tear down/rebuild does not present a realistic opportunity to create more affordable housing. Yet, COAH's approach to growth share presumes that tear downs/rebuilds do indeed represent a realistic opportunity for a municipality to create affordable housing. That is certainly not the case when individual units are torn down and a new unit is built in its place. Thus, the obligations created by the growth share regulations create are inconsistent with the obligations created by the vacant land adjustment regulations.

The methodology is flawed because COAH's regulations treat all certificates of occupancy as new units; however, the certificate of occupancy data that municipalities are required to report to the State does not distinguish between certificates of occupancy issued for new units and certificates of occupancy issued for the construction of additions to residential units, such as bathrooms, living rooms, bedrooms, and other living space that does not add an additional residential unit. Certificates of occupancy of this type are also issued for height additions, which do not create an additional residential unit. The current regulations do not distinguish between those certificates of occupancy that are merely additions to existing units and those certificates of occupancy that are issued for actual new units.

RESPONSE: The proposed rule amendment provides an exemption for certificates of occupancy issued for residential structures that have been occupied by the current owner for at least one year prior to the demolition, where no change in use has occurred or from reconstruction resulting from fire, flood or natural disaster. The amendment does not impact the previously adopted rules governing the applicability of the vacant land adjustment process or mechanisms designed to address unmet need. The comment is therefore outside the scope of the proposed rule amendment.

COMMENT: This proposed amendment is merely a half-measure. At best, this proposed amendment only partially cures a systemic flaw in COAH's growth share regulations, specifically with regard to the calculation of "actual growth" which ultimately determines a town's growth share obligation. The replacement of a single residential unit with another single residential unit does not constitute "growth" regardless of whether a homeowner replaces the torn down units after a natural disaster or whether the unit is replaced in another way. COAH's refusal to acknowledge this plain truth does not obscure the reality. This is highlighted even more starkly in the following example: An analysis of development activity in a town demonstrates--as a matter of fact--that, during the relevant period, a total of 10 single family homes were demolished and replaced with a total four new single family homes. In this case, the net result is an actual loss of six households from that municipality, regardless of who owned the units prior to, and after, demolition. However, under the proposed amendments, a town would be responsible for the growth share associated with growth of four residential units, in the event that the town cannot make the proofs necessary under the rule. This ignores the reality that the town did not incur growth, but in actuality lost units from its housing stock during the period in question. This regulatory scheme is therefore arbitrary and unreasonable.

RESPONSE: The scope of the proposal is limited to residential development that is the direct result of a demolition permit that has been issued. As explained in response to comments on the original rule, the methodology employed by the Council to establish Statewide affordable housing need included an accounting of demolitions that were factored in to the methodology and allocated at a regional level for the period 2004 through 2018. Therefore demolitions have already been factored in to the Council's growth projections. Statewide, 67,601 replacement units were factored into the methodology. The current rule proposal is limited in scope primarily to homes that are re-built as a result of fire, flood and natural disaster or homes that are being rebuilt for the benefit and use of current owner/occupant households. Redevelopment, rental properties, previously vacant properties, the replacement of units with a declining value in markets where a demolition and re-build results in increased market value and properties with a change of use or intensity of use, among other categories, would continue to generate a growth share obligation under the proposal.

COMMENT: The regulations create an impossible situation for municipalities that often have no way to satisfy the growth share obligation that tear downs/rebuilds create. Even if municipalities can [page=1402] somehow find a way to create affordable housing sufficient to address the growth share obligation that cannot be avoided through the narrow door contemplated by the proposed regulation, developed municipalities, or municipalities with insufficient land to meet their prior cycle obligations, cannot meet the need created by nonexempt tear downs/rebuilds through zoning. To illustrate, COAH's regulations only permit municipalities to capture a maximum development fee of 1.5 percent of the change in equalized assessed value (EAV) of the replacement unit minus the equalized assessed value of the torn down unit. In order to capture a sufficient fee to create an affordable unit given the average subsidy of $ 161,000 per unit COAH identified, the replacement units would have to have an EAV $ 2,683,333 greater than the torn down unit: $ 2,683,333/unit #[times]# 4 Units #[times]# 1.5 Percent = $ 161,000. It is unrealistic to presume that the average increase in EAV between the torn down unit and the replacement unit would suffice to cover the average subsidy COAH has identified to create an affordable unit. If, on occasion, a municipality can create an affordable unit at a cost of $ 20,000 per unit, even then the average increase in EAV between the torn down unit and the rebuilt unit would have to be $ 333,333: $ 333,333/unit #[times]# 4 Units #[times]# 1.5 Percent = $ 20,000. COAH has not---and indeed cannot--produce any study to support the proposition that it is realistic that the average increase in EAV would be remotely close to cover the costs of satisfying the growth share obligation the tear downs/rebuilds would create. To the contrary, the stark reality is that the costs are to be far greater than the meager 1.5 percent fee will generate. COAH's policies contravene the Fair Housing Act prohibition against forcing municipalities to expend their own money to comply. The combination of this inadequacy with the inadequacy of the 2.5 percent nonresidential fee to address the growth share created by nonresidential development magnifies the extent to which this is problematic.

RESPONSE: The proposed rule amendment provides an exemption for certificates of occupancy issued for residential structures that have been occupied by the current owner for at least one year prior to the demolition, where no change in use has occurred. The amendment does not impact the previously adopted rules governing the amount of development fees that may be imposed other than to allow an exemption in this case or when reconstruction results from fire, flood or natural disaster. The comment is therefore outside the scope of the proposed rule amendment.

Additionally, it should be noted that municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs, reconstruction programs and municipally sponsored development in which locally collected development fees can be used to leverage larger subsidies made available from state and federal funding sources. The Council believes that some of these programs may provide affordable housing opportunities that can be fulfilled with modest fee collections.

COMMENT: The tear down/rebuild standards create an impossible situation for the many municipalities entitled to a vacant land adjustment. After such a municipality has addressed its realistic development potential (RDP), and after the municipality has done all that COAH itself has concluded is practically and reasonably possible to address its unmet need, the municipality is not in a position to do still more. Yet, COAH regulations presume that municipalities can do more. Indeed, in municipalities where tear downs/rebuilds are prevalent, COAH regulations require such municipalities to do substantially more, highlighting the impossible situation these regulations create. Since so many municipalities are entitled to vacant land adjustments, this is not an isolated issue that COAH could reasonably handle through its regulations on waivers, which COAH is notoriously reluctant to grant in any event. Clearly, COAH needs to rethink its policies on tear downs and rebuilds. In this comment I also incorporate by reference COAH's files on all municipalities where COAH has granted a vacant land adjustment and consequently made a determination as to the RDP and the measures COAH itself has deemed appropriate to meet its unmet need. A review of those files combined with the growth share obligation COAH has assigned to those municipalities highlights the unreasonable operation of COAH regulations.

RESPONSE: The proposed rule amendment provides an exemption for certificates of occupancy issued for residential structures that have been occupied by the current owner for at least one year prior to the demolition, where no change in use has occurred or from reconstruction resulting from fire, flood or natural disaster. The amendment does not impact the previously adopted rules governing the applicability of the vacant land adjustment process or mechanisms designed to address unmet need. The comment is therefore outside the scope of the proposed rule amendment.

COMMENT: The proofs required to receive credit for a residential demolition under this proposed amendment are, to say the least, problematic. The rule applies to residences that were occupied by its current owner for at least one year prior to the demolition and no change in use has occurred. Consequently, COAH requires municipalities to obtain information from the owners of property who have no obligation to provide such information to the municipal representative requesting it. Therefore, there may be many circumstances where a homeowner tore down and rebuilt its home within a year, but where the municipality will still bear a growth share responsibility simply because the homeowner exercises its right to not furnish the municipality the information COAH requires. Thus, COAH has further diluted any value of a proposed regulation which is a half measure to begin with.

RESPONSE: Municipal tax records clearly indicate property ownership. Therefore, municipalities should have no difficulty in demonstrating whether a residence has been occupied by its current owner for at least one year prior to the demolition.

COMMENT: The exclusion as described in the proposed amendment is applied retroactively from January 1, 2004 to the present. However, to receive credit for the residential demolition, the Council has required a municipality to charge a development fee on the homeowner. ("Municipalities choosing to subtract these units from actual growth shall impose a development fee pursuant to N.J.A.C. 5:97-8.3(c) based on the increase in equalized assessed value that results from re-construction . . .") A retroactive imposition of a development fee is illogical and illegal. Therefore, such a requirement should be removed. Moreover, COAH fails to address a situation where a town without an adopted and approved development fee is nonetheless required by this proposed regulations to impose a development fee.

RESPONSE: The proposed exclusion is applied at the time of monitoring where a municipality's actual residential growth share obligation shall be measured based upon permanent market-rate residential certificates of occupancy issued within the municipality between January 1, 2004 and December 31, 2018. The ability for a municipality to impose fees on units so exempted will become effective with the adoption of the proposed rule and is not retroactive. Additionally, subject to approval by the Council, municipalities are permitted to adopt new and/or amended development fee ordinances at any time. The rule has been clarified to state that this provision applies to municipalities with an approved residential development fee ordinance.

COMMENT: The proposed rules regarding the impact of demolition permits on actual growth numbers will have a disproportionate and negative impact on the City of Brigantine. In fact, the proposed rules are so inapplicable to the City's current situation that any reasonable person would consider the rules arbitrary, capricious, and unreasonable. Simply put, no vacant land exists to develop affordable housing in the City, which is located on a barrier island. As a result, the proposed calculation of the impact of demolition permits on actual growth numbers will create not only an unrealistic affordable housing obligation in the City, but also an obligation that fails to recognize existing real-world conditions. If the rule is adopted as proposed, the City's growth share obligation will be artificially skewed higher, thus creating an unsound and unrealistic obligation. Therefore, we respectfully request that the rule be amended to provide exceptions to the proposed rules regarding the impact of demolition permits on actual growth numbers.

RESPONSE: The methodology employed by the Council to establish Statewide affordable housing need recognized that replacement units are a significant factor in determining overall housing demand. Replacement units reflect the net removal of existing homes, through intentional demolition as well as due to disasters such as storms or fires. This component is the number of housing units required to replace units lost, over and above the new units required to accommodate household growth. Statewide, 67,601 replacement units were factored in to the [page=1403] methodology and allocated at a regional level for the period 2004 through 2018. Therefore, these demolitions have been factored in to the Council's growth projections. The proposed amendment offers a partial exclusion of these demolitions in recognition of equity issues related to losses due to fire, flood and natural disaster as well as the reconstruction of existing homes to accommodate current occupants.

COMMENT: The proposed condition that the subtraction is limited to residential structures that had been occupied by the current owner for at least one year prior to the demolition and where no change of use has occurred can be problematic. That limitation is ambiguous as to the definition of owner-occupied for at least one year prior to the demolition. This could be interpreted to mean that the property was the primary residence of the current owner for at least one year prior to demolition. If so, most of the homes on the barrier islands, which are the second homes of the owners and are only occupied during the summer season, may not qualify. If a family desires to demolish and rebuild an existing single family home which has been in the family ownership for more than one year, even if this single family home is only a second summer home for part of the year, this development should not result in an additional growth share to the community and should not result in the imposition of a development fee based upon the increase in equalized assessed value upon the property owner.

RESPONSE: In specifying owner-occupied housing, the intent of the rule was to apply the exclusion resulting from demolitions to primary residences.

Summary of Change Upon Adoption:

The proposal has been clarified to specify that the requirement for the imposition of development fees on reconstructed units is only applicable if the municipality is authorized to collect residential development fees. The Council did not intend to require municipalities to adopt new development fee ordinances solely for the purpose of being able to impose fees on reconstructed units that have been excluded from growth.

Federal Standards Statement

No Federal standards analysis is required because this amendment is not being adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

5:97-2.5 Measuring the actual growth share obligation

(a) A municipality's actual residential growth share obligation shall be measured based upon permanent market-rate residential certificates of occupancy issued within the municipality between January 1, 2004 and December 31, 2018.

1. In determining the actual residential growth share obligation, the following may be subtracted from the number of

market rate certificates of occupancy issued:

i.-ii. (No change.)

iii. Certificates of occupancy issued for graduate student housing owned and/or operated by an institution of higher education and farm labor housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and classified as R2, R3, or R5 by the Uniform Construction Code (UCC);

iv. Additional market-rate rental units in an inclusionary or mixed-use development pursuant to N.J.A.C. 5:97-6.4(b)6ii where the affordable housing units are rental units that are addressing a municipality's growth share obligation; and

v. Certificates of occupancy issued for owner-occupied residential structures that have been issued a demolition permit provided the unit for which the demolition permit has been issued was occupied by its current owner for at least one year prior to the demolition and no change in use has occurred. Municipalities *[choosing]* ***with an approved residential development fee ordinance that choose*** to subtract these units from actual growth shall impose a development fee pursuant to N.J.A.C. 5:97-8.3(c) based on the increase in equalized assessed value that results from re-construction, but shall exempt reconstruction that results from fire, flood or natural disaster.

2. (No change.)

(b)-(e) (No change.)